



**REPORT ON ENHANCED USE LEASE (EUL) AND  
OTHER PRIVATE DEVELOPMENT PROJECTS ON  
FEDERAL ENCLAVE PROPERTY IN MARYLAND**

**Chapter 338 of the Acts of the General Assembly of 2008  
Section 3**

**Submitted by:**

**Maryland Department of Business and Economic Development**

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## Report on Enhanced Use Lease and Other Private Development Projects on Federal Enclave Property in Maryland

The BRAC Community Enhancement Act was enacted during the 2008 session of the Maryland General Assembly. The statute establishes a process for designating BRAC Revitalization and Incentive Zones. The Department of Business and Economic Development in partnership with other state agencies is responsible for designating the zones and administering the program. Additionally, the BRAC Community Enhancement Act requires the Department of Business and Economic Development, in consultation with the Department of Assessments and Taxation, shall prepare a report that outlines:

- (1) the enhanced use lease projects, or other private development projects, on federal enclave property in the State that are proposed or in development;
- (2) the extent to which the enhanced use lease projects, or other private development projects, on federal enclave property may be subject to State and local property taxation;
- (3) the status of any payment in lieu of tax agreement negotiations between local jurisdictions, the State, and private developers for projects on federal enclave property; and
- (4) recommendations, if any, for incentives that would encourage payment in lieu of tax agreements between local jurisdictions, the State, and private developers for projects on federal enclave property.

*The following is an update on the active EUL projects at Maryland military installations:*

### **Fort Detrick**

At Fort Detrick, an EUL project (the Central Utility Plant) is already operational and has been assessed at \$5,771,000 with annual taxes totaling \$54,000 to \$55,000. Formal negotiations have not begun for a PILOT, but both Frederick County and the City of Frederick appear to have made good faith efforts to begin those negotiations. It appears that thus far the Army Corps of Engineers (ACE) and Fort Detrick have not aggressively pursued negotiations.

Pre-negotiation and fact-finding discussions have been held and the Frederick County Commissioners have authorized their staff to negotiate a PILOT. On June 4, 2008, Frederick County Attorney staff met with ACE and the installation command at Fort Detrick in Frederick to discuss why PILOT negotiations would be necessary under § 7-211.3. On July 10, 2008, the Fort Detrick installation command and ACE staff made a presentation to the Board of County Commissioners to brief them on the EUL project. The board authorized county staff to negotiate with the installation and ACE. It is our understanding from ACE that pre-negotiation discussions have begun with the City of Frederick.

### **Fort George G. Meade**

An EUL (the Fort Meade Technology Center) is contemplated for Fort George G. Meade. Negotiations have not begun for a PILOT. All parties appear to agree that negotiations should begin for this project, after approval of a master lease agreement by the Department of Defense. Anne Arundel County is preparing for negotiations. On June 4, 2008, the Anne Arundel County Attorney sent a letter to the Trammell Crow Company, the private developer selected for the Fort Meade EUL project. The letter provided that “the County is willing to begin discussions to negotiate a payment in lieu of tax (PILOT) agreement with Trammell Crow regarding the Fort Meade Technology Center to be located on Fort Meade.” As of the date of this report, the Anne Arundel County Attorney has not received a response from Trammell Crow. At the request of the Anne Arundel County staff, the Maryland Department of Transportation (MDOT) staff met with county staff to prepare for negotiations. In addition, a meeting was held with representatives from Trammell Crow, Fort Meade, Anne Arundel County, the Maryland State Highway Administration (SHA) and MDOT to discuss a Traffic Impact Study for the project to potentially be used as a factual input into later negotiations.

### **Aberdeen Proving Ground**

The Master Lease with real estate developer Opus East, LLC for the Government and Technology Enterprise (GATE) EUL project predates the passage of Senate Bill 206. Pre-negotiation, fact-finding discussions have taken place since enactment of the legislation.

On July 1, 2008, representatives from Harford County’s Office of Economic Development and Department of Public Works and Transportation, the City of Aberdeen, MDOT and SHA, Maryland State Department of Assessments and Taxation (SDAT) and Aberdeen Proving Ground met to better understand the Aberdeen Proving Ground EUL GATE project and lease agreement. The purpose of the meeting was to allow for the parties to establish a factual basis for future PILOT agreement discussions under § 7-211.3.

On November 12, 2008, ACE sent a letter to Harford County notifying them of the project, signaling their interest to begin formal negotiations of a PILOT. A meeting is scheduled between all the parties on December 18<sup>th</sup>, to initiate negotiations.

*Recommendations for incentives that would encourage PILOT agreements between local jurisdictions, the State and private developers for projects on federal enclave property:*

Two recommendations are included to better incentivize PILOT agreements between local jurisdictions, the State and private developers for projects on federal enclave

property. Both recommend actions by the federal government to better incentivize private developers to enter PILOT agreements.

- 1.) Federal law or regulation should require EUL developers to mitigate their impact on public facilities outside of the boundaries of the federal enclave. Proposed projects will have significant impact on state highways – for instance – but the Army only requires developers to consider impacts within the boundaries of the installations. Traffic impact studies done through environmental assessments and project reviews have been limited in scope to the impacts to the federal enclave. All EUL developers (regardless of military branch) should be required to conduct traffic impact studies, with the scope agreed to by state and local highway agencies. This study should recommend improvements to mitigate their impact. This would provide both an informational basis to facilitate negotiations and an economic incentive for private developers to agree to a PILOT.
- 2.) The federal government should review the policies of the EUL program, specifically regarding provisions of lease agreements addressing taxation. Private developers for certain projects approved in Maryland appear to have little economic incentive to either negotiate a PILOT or provide mitigation for their impact on public infrastructure.

BACKGROUND: It appears that the DoD assumed that the EUL projects were not subject to taxation under existing Maryland law. It is our understanding that lease agreements at Aberdeen Proving Ground and Fort Detrick include language that puts the risk and burden of real estate taxation on the military installations. Provisions in copies of the Aberdeen Proving Ground GATE project agreement, as shared with MDOT, state:

*“It is the expectation of Lessee and Lessor that the Lease Premises and any improvements thereon and interest therein shall be exempt from all real estate and other taxes, including ad valorem taxes and taxes on rent received from the Lease Premises. Notwithstanding anything contained herein to the contrary, in the event any taxes are imposed on Lessee, the Lease Premises or any of the improvements thereon or interest therein, Lessee shall be entitled to reduce any rent payable hereunder (and off-set against any such rent coming due hereunder) any amounts paid by Lessee for any such taxes.”* (Enhanced Use Lease No. DACA-31; Section 28, page 25)

However, an opinion of the Maryland Attorney General concluded that the projects were already subject to taxation under existing Maryland law. Under this lease agreement, though, there is little economic incentive for the private developer to negotiate a PILOT agreement.

U.S.C. 10-2667 – which establishes the EUL program and waives federal tax immunity - calls for provisions in lease agreements to address potential taxation.

*(f) **Treatment of Lessee Interest in Property** — The interest of a lessee of property leased under this section may be taxed by State or local governments. A lease under this section shall provide that, if and to the extent that the leased property is later made taxable by State or local governments under an Act of Congress, the lease shall be renegotiated.*

No such provision has been included in certain approved leases, such as the Aberdeen Proving Ground GATE project. Future lease agreements should address the project's liability for state and local taxation and be structured to ensure PILOT agreements are advantageous to all parties, including the private developer.

**Maryland Military Installations  
Enhanced Use Leasing (EUL) Projects  
As of 10/07  
Prepared by Office of Military & Federal Affairs (OMFA)**

<b>Installation</b>	<b>Project Name</b>	<b>Acreage</b>	<b>Existing Land Use</b>	<b>Proposed Land Use</b>	<b>Master Developer</b>	<b>Status</b>
Aberdeen Proving Ground (APG)	Government and Technology Enterprise (G.A.T.E.)	200	Vacant	2 million square feet Office/Research/Development & Technology Park	Opus East, LLC	Master Lease Agreement Signed 9/06. Ribbon cutting for first 60k sqft building 12/08.
APG	Lauderick Creek	1,300	Former US Army Chemical School	Law Enforcement Training Facility	APG Development Partners	Postponed until further notice.
Andrews Air Force Base	Tyler Road	24	Former Multiplex Housing	Office, Industrial, Retail, Hospitality, Institutional, and/or Mixed-use	Clark Realty Capital	Postponed by Air Force until further notice.
Andrews Air Force Base	Southwest Housing	31	Vacant	Office, Industrial, Retail, Hospitality, Institutional, and/or Mixed-use	Clark Realty Capital	Postponed by Air Force until further notice.
Fort Detrick	Gateways (Area A)	20	Vacant	Hotel/Conference Center/Office/Laboratories	Detrick Properties, LLC	Postponed by Ft. Detrick until further notice.
Fort Detrick	Gateways	4	Partially developed with Admin./Labs/vacant	Administrative & Laboratories	Detrick Properties, LLC	Postponed by Ft. Detrick until further notice.
Fort Detrick	Gateways	1.78	Site of designated as a place on National Register of Historical Places	Historic Site-optional as part of Gateways parcels	Detrick Properties, LLC	Postponed by Ft. Detrick until further notice.
Fort Detrick	Commercial Cogeneration Power Plant	10+/-	Vacant	Commercial Cogeneration Power Plant	Chevron-Keenan Development Team	Ribbon cutting Summer 2008. Have begun commercial operations.
Fort Meade	Not named	173	Vacant	Office & Retail	Trammell Crow	Under negotiations with Army Corps of Engineers (ACE)
Fort Meade	Golf Course	367	Vacant	2-18 hole Golf Courses	Trammell Crow	Under negotiations with Army Corps of Engineers (ACE)
Indian Head	Not named	Undetermined	Vacant	Under discussion	Undisclosed	Under discussion – not advertised